

***United States Court of Appeals
for the Second Circuit***



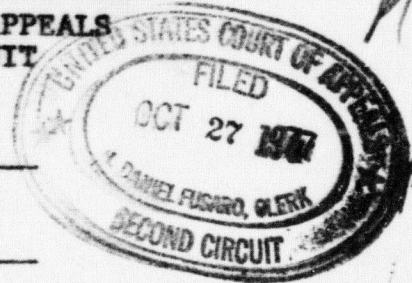
**APPELLANT'S
REPLY BRIEF**

77-5013

10/27

B
p/s

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



DOCKET NO. 77-5013

THE BOHACK CORPORATION,

Plaintiff-Appellee,

v.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,

Defendants-Appellants.

REPLY BRIEF OF DEFENDANT-APPELLANT,
TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

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NO. 807, INTERNATIONAL
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REPLY BRIEF OF DEFENDANT-APPELLANT,
TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Local 807's disputes with Bohack stem from its failure to utilize its own drivers to make deliveries to its stores. It was never a contention of Local 807 that Bohack was prohibited from having its trailers loaded at the place of business of its suppliers, provided that the

deliveries to the stores were made by Bohack drivers. ^{1/}
Local 807 clarified this point to Bankruptcy Judge Parente
and Local 807's allegations of contractual violation are
set forth in his October 15, 1976 order (114a). ^{2/}

Bohack self-serving arguments that Shopwell refused
to permit Bohack's drivers to pick up merchandise at
Shopwell's warehouse contravene the documentary evidence
contained in the record. Paragraph 1 (d) of the letter
agreement between Bohack and Shopwell provides that
"All merchandise sold by Shopwell to [Bohack] shall be
picked up by [Bohack] at Shopwell's warehouse facility and
is being purchased here under F.O.B. Shopwell's warehouse
facility." [Emphasis added] This very clear recitation of
authority, set forth in a document dated November 11, 1974, has
gone unanswered by Bohack. ^{3/} That document set forth the
rights and obligations of Bohack and Shopwell regarding the
supply and transportation of produce and dairy to the Bohack

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- ^{1/} The Committee's award of May 16, 1975 provided that
Bohack was to "cease and desist" from utilizing the
services of other drivers to make deliveries to its
stores. It did not prohibit Bohack "from receiving
merchandise from other suppliers." Bohack Brief
(hereinafter "B.Br.") p. 6.
- ^{2/} Local 807 contends that Bohack violated Article 40,
Section 4 (a), Article 50, Section 2 and Rider
paragraph 2 of the Agreement.
- ^{3/} Although the introduced copy was unsigned it was pro-
vided to Local 807 at the deposition of Joseph Binder,
dated December 12, 1975 (386a), and introduced at the
rejection proceeding, without objection (257a).

stores on and after December 16, 1974 (386a). ^{4/}

The incredulity of Bohack's effort to justify its conduct on and after December 16, 1974, becomes more apparent with an analysis of its argument that at the time of its changeover to Hills (as a supplier), Bohack sought to use its drivers to make deliveries to the stores. (B.Br. p.15) The agreement with Hills didn't take place until after Bohack terminated all of its drivers and commenced its proceeding to reject the Agreement. ^{5/}

^{4/} It was later amended to include meat and delicatessen products (386a).

^{5/} The Hills-Bohack agreement is dated August 27, 1975. The drivers were terminated and Bohack moved, by order to show cause, to reject the Agreement on July 18, 1975 (387a, 393a-394a). If Bohack was in a disadvantageous bargaining position vis a vis Shopwell, the tables were reversed in the Bohack-Hills negotiations. Hills needed Bohack's volume of business to avoid Chapter XI itself (291a, 395a-396a).

It is interesting to note that Bohack suggests that the warehousing and trucking operations could not be separated. Yet, Bohack repeatedly emphasized its own diligence in attempting to persuade the suppliers to permit Bohack drivers to pick up merchandise at their warehouses. Obviously, the operations were separate as to Bizzuto and Filigree and could have been so with the other suppliers had Bohack desired to utilize its drivers from those locations.

On July 15, 1977, Bankruptcy Judge Parente executed a liquidation order which continued Bohack's status, as a debtor-in-possession, for the purpose of liquidating its assets, including the sale of all of its stores. Rejection of the Agreement did not influence this result either positively or negatively. Bohack's assertion that rehabilitation efforts necessitated rejection of the Agreement is without merit from both a factual and legal standpoint.

The July 30, 1974, order, executed by Bankruptcy Judge Parente, authorized Bohack to continue its business as a debtor-in-possession, and provided that the debtor-in-possession had the authority "to enter into any contracts incidental to the normal and usual operation" of that business. ^{6/}

6/ A copy of Bankruptcy Judge Parente's July 30, 1974 order is annexed to this Reply Brief and marked Exhibit "A".

Bohack appears to argue in its brief that a debtor-in-possession cannot assume or adopt a labor agreement without a specific order from the bankruptcy court "or such action that would mislead the other party to the contract" (B.Br. 32). ^{7/} The specific order argument has been considered and rejected by this Court in In re Wil-Low Cafeterias, Inc. (Kaftan v. Siegel), 111 F.2d 429 (2d Cir. 1940). The Wil-Low court construed the power of the debtor-in-possession to include entering into collective bargaining agreements with the bargaining representative for its employees, without a specific order from the bankruptcy court. A fortiori the debtor-in-possession has the authority to assume an existing collective bargaining agreement without a court order.

A debtor-in-possession is not bound to assume a labor agreement entered into by the debtor, but it must act promptly if it intends to reject the terms thereof. The practical effect of Section 313 (1) is to encourage creditors, including employees and their bargaining representative, to renegotiate

^{7/} What could have been more misleading to Local 807 than applying the Agreement's terms to the drivers for more than 12 months before seeking a rejection of it. From December 16, 1974, Local 807 made Bohack fully aware that it took issue with Bohack's efforts to divert its drivers work to persons employed or utilized by its suppliers. Bohack did not take any step or give Local 807 any indication that it might seek to reject the Agreement until 6 months later.

their mutual rights, if and when requested by the debtor, in order to keep the operation going. Brotherhood of Railway, Airline and Steamship Clerks, etc. v. REA Express, Inc., 523 F.2d 164 (2d Cir. 1975). Yet, in the instant case Bohack admittedly, conformed to the terms of the Agreement until July 18, 1975, and never sought to renegotiate any of the rights or obligations set forth therein. ^{8/}

In Point V and VII of Bohack's Brief it is argued that "there are no issues that should be arbitrated" between Bohack and Local 807 (B.Br. p.39). Bohack's contention is that any claims for damages or administrative claims of its former drivers or Local 807 are subject to the priority provisions of Section 64 of the Bankruptcy Act, 11 U.S.C. Section 104. This Court answered that argument in Truck Drivers Local Union No. 807 v. Bohack Corp., 541 F 2d 312, 321 (2nd Cir. 1976). In footnote 15 of that decision this Court explained that if a labor agreement is rejected by the bankruptcy court its arbitration provisions

"could continue to support an order of the bankruptcy judge that the parties arbitrate their dispute, though the priority and status of any arbitration award would be a matter of bankruptcy law for the bankruptcy court to decide."

Thus, where a bankruptcy court rejects a labor agreement,

^{8/} Of course Local 807 has continuously contended, from December 16, 1974, that Bohack was violating the Agreement by receiving deliveries at its stores off Truck Fleet trailers that were not operated by Bohack drivers. However, the terms of the Agreement were otherwise applied to its drivers from July 30, 1974 through July 18, 1975.

and also orders arbitration. It is for the arbitrator to decide if there was a breach of that contract. If the arbitration forum finds no breach, the dispute is resolved with final and binding effect upon all interested persons or entities. If the arbitrator finds that the contract has been breached and awards compensatory damages, the priority and status of that award "would be a matter of bankruptcy law for the bankruptcy court to decide."

In footnote 15 of the Bohack decision, this Court went on further to explain that if the bankruptcy Court

"finds that the contract was assumed or affirmed, a claim for wages or other contractual benefits for the period of the contract after employment ceased would arise only if the arbitrator... also finds that the contract was breached by the employer's acting after the petition was filed."

The bankruptcy court would rule on a claim for wages or other contractual benefits under circumstances where the bankruptcy judge did not order arbitration. However, Bankruptcy Judge Parente did order arbitration in this case. The drivers and Local 807's claims are, therefore, to be submitted to arbitration whether this Court finds that Bohack adopted the Agreement or that it was properly rejected. This Court left the decision to order arbitration with the bankruptcy judge. Bankruptcy Judge Parente exercised that discretion and ordered arbitration. Bohack did not appeal from that portion of Chief Judge Mishler's order, of May 4, 1977, that affirmed Bankruptcy Judge Parente's order to submit the

disputes to arbitration. It appealed only from those portions of the October 21, 1976, order that were reversed and vacated by the District Court to wit:

1. That the arbitrator's award should be subject to the bankruptcy court as to status, amount and validity, and

2. That selection of the arbitrator shall be in accordance with the procedures set forth in Section 26, 11 U.S.C. 49.

Likewise, in Point VI of its brief, Bohack raises an issue that was decided by Chief Judge Mishler and from which no appeal was filed with this Court. Bohack had argued that Local 807's filing of an administrative claim with the bankruptcy court constituted a waiver of arbitration. Chief Judge Mishler found that Bohack's argument lacked merit (147a).^{9/}

between 9/ Since Bohack's appeal was clearly limited to the District Court's treatment of whether (1) the arbitration award is subject to the bankruptcy court's review of its status, amount and validity, and (2) if the arbitrator is to be selected pursuant to Section 26 of the Bankruptcy Act, it specifically acquiesced in the Decision of Chief Judge Mishler, affirming Bankruptcy Judge Parente's order, to submit the authorized disputes Local 807 and Bohack to arbitration. Having thereby disclaimed any intention to appeal that determination, Bohack has deprived this court of jurisdiction to review that portion of the District Court's decision. Beneson v. United States, 385 F. 2d 26, 29 (2d Cir. 1967); Terkildsen v. Waters, 481 F. 2d 201, 205-06 (2d Cir. 1973). Furthermore, Local 807's administration claim was, expressly, contingent upon a favorable arbitration award.

Neither Bohack's Notice of Appeal nor the Joint Appendix treat with that portion of the record relating to Chief Judge Parente's exercise of judicial discretion in ordering arbitration. Suffice it to say that it is Bohack that has waived its right to raise the propriety of Bankruptcy Judge Parente's exercise of that discretion before this Court.

Point VII of Bohack brief espouses Bankruptcy Judge Parente's findings that the procedure set forth in Section 26 of the Bankruptcy Act, 11 U.S.C. Section 49, should be followed.^{10/} Local 807 has continuously maintained that the grievance procedure set forth in Article 46 of the Agreement (42a-44a) must be applied to the "authorized" issues.

This Court has rejected the Section 26 procedure for disputes within the scope of a surviving arbitration agreement that contains its own grievance machinery.^{11/}

^{10/} Section 26 (b) provides: Three arbitrators shall be chosen by mutual consent, or one by the receiver or trustee, one by the other party to the controversy, and the third by the two so chosen or, if they fail to agree in five days after their appointment, the court shall appoint the third arbitrator.

^{11/} Tobin v. Plein, 301 F. 2d 378 (2d Cir. 1962); Local 807 v. Bohack, supra at 319.

In Tobin, this Court noted that:

"[Section 26] is clearly drawn to provide arbitration machinery where no contractual arrangements exist. It does not supercede existing contractual provisions." ^{12/}

The contractual agreement to arbitrate survives the filing of a petition in bankruptcy, Local 807 v. Bohack,^{13/} supra at 319-20. In Kevin Steel^{13/} Judge Feinberg was careful to note that "the Bankruptcy Act...does not authorize a debtor-in-possession to ignore its obligations under the Labor Act any more than it can ignore those imposed by the Internal Revenue Code."^{14/} Where the bankruptcy court orders arbitration, "the contract is of sufficient vitality to support such an order."^{15/}

The Tobin, Bohack and Schilling^{16/} decisions focus upon the grievance procedure that should be applied to

^{12/} 301 F. 2d at 381.

^{13/} Shopmen's Local Union No. 455, et al. v. Kevin Steel Products, Inc., 519 F. 2d 698 (2d Cir. 1975).

^{14/} Ibid at 706.

^{15/} Local 807 v. Bohack, supra at 320.

^{16/} Schilling v. Canadian Foreign S.S. Co., 190 F. Supp. 462 (S. D. N.Y. 1961).

contractual disputes with a debtor-in-possession or trustee. Their conclusion is that authorized disputes must be submitted to the grievance procedure contained in the "surviving agreement to arbitrate." Article 46 of the Agreement contains detailed procedures for the handling of grievances arising between the parties thereto. Chief Judge Mishler found that "If the contractual duty to arbitrate survives rejection, there is no reason why the grievance procedure established by the parties should not also survive" (141a).

This Court, in its remand of this case to the bankruptcy court, stated that "the priority and status of any arbitration award would be a matter of bankruptcy law for the bankruptcy Court to decide."^{17/} This is a far cry from a bankruptcy court's review of the "status, amount and the validity of any such arbitration award."^{18/}

A district court of the United States has the jurisdictional authority to vacate an arbitration award in suits brought under Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185. A bankruptcy court does not

^{17/} Local 807 v. Bohack, supra at 321 (footnote 14).

^{18/} Bankruptcy Judge Parente's order of October 21, 1976 (116a), and Bohack's Notice of Appeal to this Court (155a).

possess such authority.^{19/} Furthermore, the Supreme Court held in Enterprise Wheel that:

"The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." ^{20/}

Chief Judge : 's Decision of April 21, 1977, found that:

"by ordering arbitration, the bankruptcy judge implicitly acknowledged that the arbitrator possesses special expertise and competence in resolving labor grievances. There is no point to arbitration proceedings if a bankruptcy judge, lacking experience in the collective bargaining process, undertakes a plenary review of the arbitrator's decisions concerning areas where the arbitrator's knowledge and experience are far superior. Once an award is made, however, its status and priority are questions for the special expertise of the bankruptcy court, which may then relegate the claims of the union to a proper place in the framework of the re-organization.

Any review of the arbitration award should be brought to the appropriate district court of the United States under Section 301. The Bankruptcy Act governs only the priority and status of that award.

^{19/} Local 807, I.B.T. v. The Bohack Corporation, 91 LRRM2164 (E.D.N.Y. 1975), Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

^{20/} 363 U.S. at 596.

Bankruptcy Judge Parente's October 21, 1976, order provided that Local 807 and Bohack submit to arbitration "The issue of whether or not the [Agreement]...should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired." Chief Judge Mishler reversed and vacated that part of the October 21 order, because:

"in the context of a Chapter XI arrangement, an arbitrator's decision on this point will effect interests consigned to the bankruptcy court, specifically, whether employment of the Local 807 drivers is "onerous and burdensome" to the debtor-in-possession. Indeed, in allowing rejection of the contract, the bankruptcy judge found that Bohack could not attain financial viability and at the same time employ Local 807 drivers. If the arbitrator is now allowed to re-instate terminated employees, the rejection of the contract becomes meaningless."

In a rejection proceeding it is not the employment of any particular group of persons that a bankruptcy court examines to determine if their status vis a vis the debtor-in-possession is "onerous or burdensome." The object of such a proceeding is to determine if the labor agreement covering those employees is "onerous and burdensome." This Court has stated in the REA Express case that the practical effect of Section 313 (1) is to force all creditors, including those who render services to the debtor-in-possession, to renegotiate their contracts, in order to maintain the operation as a going concern. An issue before Bankruptcy Judge Parente was whether to grant the petition to reject the Agreement as onerous; it was not

for that Court to determine whether the employment of drivers represented by Local 807 was onerous.

Although the Bohack drivers were terminated on July 18, 1975, deliveries continued to Bohack stores, on Truck Fleet equipment, until the bankruptcy Court's liquidation order of July 8, 1977.^{21/} An issue before the arbitrator will be whether Bohack's conduct, on and after December 16, 1974, in accepting deliveries at its stores from suppliers and terminating its own employees, constituted a breach of the Agreement. If we assume, arguendo, that an arbitrator found that conduct by Bohack breached the Agreement, why (even if the bankruptcy court was correct in its rejection determination) would the damages to the former Bohack drivers be confined to the term of the Agreement?

Work opportunity would, according to this premise, have continued for Bohack drivers until July 8, 1977, and it is only reasonable to assume that, absent Bohack's breach of the Agreement, Local 807 would have continued to

^{21/} Although issue (d) in the October 21, 1976 order refers to reinstatement, it unquestionably includes damages. Since the Bohack business is in the process of liquidation, Local 807 would seek damages from the arbitrator through July 8, 1977 for failure to utilize the former Bohack drivers to make deliveries to the stores.

be the bargaining agent for those drivers, and have had a labor agreement with Bohack covering the period through July 8, 1977. Damages to the Bohack drivers did not terminate on March 31, 1976 (the expiration date of the Agreement), but continued through July 8, 1977. Issue (d) of the October 21, 1977 order became moot on July 8, 1977. Yet, the arbitrator's award of damages, if any, should not be limited to the term of the Agreement. If the arbitrator has the power to reinstate drivers to their former employment by an award issued subsequent to the Agreement's termination date, a fortiori, it has the power to award damages for that period as well.

CONCLUSION

Upon review of the order of the U.S. District Court for the Eastern District of New York, dated May 4, 1977, In the Matter of the Bohack Corporation (Docket No. 74-B-933) this Court should:

A. reverse that portion of the order that affirms the May 19, 1976 order of Bankruptcy Referee Parente, and find (1) that Bohack assumed the Agreement and thereafter could not reject it, or (2) that the Agreement was not proven by Bohack to be onerous upon the estate, or (3) that the Agreement was not subject to Section 313(1) of the Bankruptcy Act on May 19, 1976.

B. reverse that portion of the order that reverses and vacates the order of Bankruptcy Referee Parente dated October 15, 1976.

C. reverse that portion of the order that reverses the bankruptcy court order of October 21, 1976 to the extent that it directs arbitration of "d) The issue of whether or not the contract rejected by the employer should be specifically enforced by the reinstatement of each employee notwithstanding the fact that the contract has expired."

D. reverse that portion of the order that directs the bankruptcy court to determine the appropriate committee to hear the arbitration if the debtor disagrees that the Committee should

hear Local 807's authorized grievances.

Respectfully submitted,

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(212) 361-7950

Of Counsel:

J. Warren Mangan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
In the Matter
-of-
THE BOHACK CORPORATION,
Debtor. :

FILED
JUL 30 1974
C. ALBERTI FARENTE
BANKRUPTCY JUDGE

In Proceedings for an
Arrangement
No.

ORDER AUTHORIZING DEBTOR IN
POSSESSION TO OPERATE BUSINESS,
PAYMENT OF WAGES AND SALARIES
TO OFFICERS, RESTRAINING SUITS
AGAINST THE DEBTOR

----- X
At Jamaica, New York, in said District
on the 30th day of July, 1974.

An informal hearing having been held before me on
July 30, 1974, and after hearing BLUMBERG, SINGER, ROSS,
GOTTESMAN & GORDON and J. STANLEY SHAW, attorneys for the debtor,
and no adverse interest being represented thereat, and suffi-
cient cause appearing therefor,

I, W, on motion of BLUMBERG, SINGER, ROSS, GOTTESMAN &
GORDON, attorneys for the debtor in possession, it is

ORDERED, that the debtor in possession be and it hereby
is authorized to continue in possession of its property and
manage the same and operate its business until the further order
of the Court and it is further

ORDERED, that the debtor in possession be and it hereby
is authorized to buy and sell merchandise, supplies and other
property, and to render services in the normal course of its
business for cash or on credit; and to purchase or otherwise
acquire for cash or on credit such materials, equipment, supplies,
services or other property as may or shall be necessary and

RECEIVED
JUL 30 1974
C. ALBERTI FARENTE
BANKRUPTCY JUDGE

advisable in connection with the operation of such business and the management and preservation of said property and to pay for its purchases made on credit, when due; and to enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property; and it is further

ORDERED, that all banks be and they hereby are directed to transfer to the account of the debtor in possession, all monies now on deposit in the name of the debtor, whether special or regular account; and it is further

ORDERED, that THE MANUFACTURERS HANOVER TRUST COMPANY, 350 Park Avenue, New York, New York, be and it hereby is designated as sole depository for the funds of the debtor estate; that the debtor shall maintain the following accounts as debtor in possession: (1) a General Account, and (2) a Tax and Trust Account; that checks drawn against any of said accounts shall be signed by the debtor in possession by either FRANKLIN KNOBEL or JOSEPH BINDER and MARVIN LERNER or LOUIS M. ROBUSTELLI, and it is further

ORDERED, that the debtor in possession and all property thereof, shall be subject at all times during these proceedings to the control of this Court, and it is further

ORDERED, that the amount of all required and authorized deductions from wages for taxes, hospitalization and other purposes, and any and all taxes or contributions required to be paid by the debtor in possession in its behalf,

or in behalf of its employees or other persons including all excise and sales taxes, shall be deposited in the Tax and Trust Account at the time when such deductions are made or are computed or are required to be deducted; and the deposit of said items as may be considered trust items shall not be deferred; and that such funds deposited in the Tax and Trust Account shall be used and disbursed only for the particular purpose for which they are set aside and it is further

ORDERED, that verified monthly reports shall be filed with the Bankruptcy Judge, together with duplicate deposit slips showing all deposits in the Tax and Trust Account; and it is further

ORDERED, that the salaries of the following officers of the debtor in possession be fixed as follows, non-cumulative, until the further order of the Court:

<u>NAME</u>	<u>WEEKLY</u>	
FRANKLIN KNOBEL Chairman of the Board of Directors	\$1,846.20	1654 ⁰⁰
JOSEPH BINDER, President	\$1,846.20	1654 ⁰⁰
MARVIN LERNER, Executive Vice-President and Director	\$1,153.85	
MELVIN LEVY, Executive Vice-President Administration	\$1,057.69	
LOUIS M. ROBUSTELLI, Treasurer	\$1,009.62	
LEON BELLOWS, Vice-President, Produce	\$ 961.54	
LOUIS CAMPANELLI, Vice-President, Sales	\$ 865.38	

<u>NAME</u>	<u>WEEKLY</u>
STEPHEN CHAPKLIN, Vice-President, Real Estate	\$ 538.46
MILTON A. FRANKFURT Vice-President, Resident Counsel	634.62
HERBERT GORAL Vice-President, Dairy, Frozen Foods, Bakery	807.70
JOSEPH KRANZ Vice-President, Meat, Delicatessen	961.54
MAF MICHAEL LaSORSA Vice-President, Non-Feeds	538.46
JOSEPHINE ROBINSON, Secretary	317.31
EMANUEL ROTH Vice-President, Management, Information Services	693.08
WALTER ROOS Vice-President, Distribution	576.93

and it is further

ORDERED, that the debtor in possession is permitted to pay its employees wages for the week in which the petition under Chapter XI was filed; and it is further

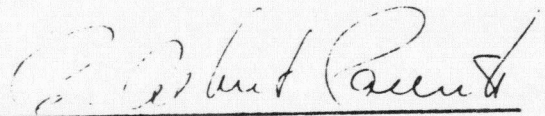
ORDERED, that all persons, firms and corporations, including all creditors of the said debtor, and the representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshals and other officers, and their deputies, representatives and servants, are hereby jointly and severally enjoined, restrained and stayed from the commencement or continuation of any court or other

proceeding against the debtor, or any act or the commencement or continuation of any court proceeding to enforce any liens against the property of the debtor, until the further order of this Court, and from removing, transferring, disposing of, or attempting in any way to remove, transfer or dispose of, or in any way to interfere with any property, assets or effects in the possession of the said debtor-in-possession, or owned by said debtor-in-possession, and in the possession of any officer, agents, attorneys or representatives of said debtor-in-possession; and all said persons are further enjoined, stayed and restrained from executing or issuing or causing the execution or issuance or the suing out of any Court of any writ, process, summons, attachment, replevin, execution or any other proceedings for the purpose of impounding or taking possession or interference with, any property owned by or in the possession of the said debtor-in-possession; and each and all of said persons, firms or corporations having process against the debtor are hereby jointly and severally restrained, stayed and enjoined from taking any steps, measures, proceedings, doing any act or thing in any action wherein the said debtor may be either plaintiff, defendant, petitioner or respondent, and from causing, procuring, suffering or permitting the same to be done until final decree herein, and it is further

ORDERED, that all persons, firms and corporations be and they hereby are enjoined from disturbing, interfering

with, cutting off or disconnecting the furnishing of gas, telephone service, heat, electrical service, water supply or any other utility of like kind furnished to said debtor-in-possession on account of any unpaid past due bills due from the debtor, until the further order of this Court, and it is further

ORDERED, that the time of the Debtor to file its schedules, statement of affairs and executory contracts be, and it hereby is, further extended for a period of fifteen (15) days from the date of this order in accordance with the provisions of Section 324 (Subd. 1) of the Bankruptcy Act.


C. Albert Parente
~~Referee in~~ Bankruptcy Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

In the Matter

-of-

THE BOHACK CORPORATION,

Debtor.

: In Proceedings for an
Arrangement.

: No.

: APPLICATION FOR ORDER
RESTRAINING CREDITORS
FROM PROCEEDING WITH
ACTIONS

- - - - - X

TO THE HONORABLE BANKRUPTCY JUDGE IN THESE PROCEEDINGS:

The petition of the debtor in possession,
respectfully shows and alleges:

1. The debtor filed a petition hereunder
Chapter XI, Section 322 of the Bankruptcy Act on July ,
1974, thereafter this matter was referred to one of the
Bankruptcy Judges of this Court.

2. Petitioner has requested to be continued
in the operation of its business pursuant to an order of
this Court.

3. A number of creditors have threatened to
institute suit against the debtor. In addition, the debtor
may owe sums of money to utility companies which may attempt
to shut off the use of the utilities for non-payment of
recent bills.

4. The aforementioned claims are not based upon
fraud, embezzlement or moneys received in a fiduciary
capacity and are dischargeable in bankruptcy.

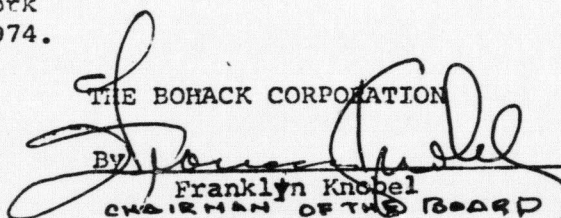
5. Unless these creditors are stayed from

taking proceedings and interfering with the debtor's property, the assets of the debtor will be dissipated and creditors as a whole, will suffer thereby.

WHEREFORE, petitioner prays for the annexed order and for such other and further relief as is just.

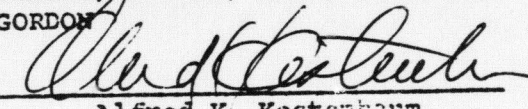
DATED: New York, New York
July 30, 1974.

THE BOHACK CORPORATION

By 

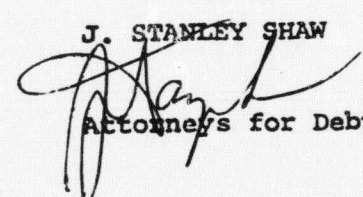
Franklyn Knobel
CHAIRMAN OF THE BOARD

BLUMBERG, SINGER, ROSS, GOTTESMAN
& GORDON

By 

Alfred K. Kestenbaum
A Member of the Firm

J. STANLEY SHAW

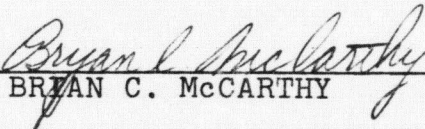

Attorneys for Debtor

STATE OF NEW YORK)

SS.:

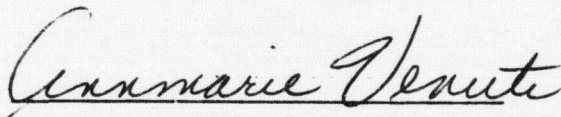
COUNTY OF QUEENS)

Bryan C. McCarthy, being duly sworn deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 27 Arleigh Road, Great Neck, New York 11021. On October 27, 1977 deponent served Truck Drivers Local Union No. 807, International Brotherhood of Teamster's brief on The Bohack Corporation by Shaw & Levine, Esqs., at 770 Lexington Avenue, New York, New York 10021.


BRYAN C. McCARTHY

Sworn to before me this

27th day of October, 1977.



ANNMARIE VENUTI
NOTARY PUBLIC, State of New York
No. 41-4513060
Qualified in Queens County
Commission Expires March 30, 1979